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4 **UNITED STATES DISTRICT COURT**
5 **DISTRICT OF NEVADA**

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7 DAVID SHU,
8 Plaintiff,
9 v.
10 NANCY HUTT et al.,
11 Defendants.

Case No. 2:18-cv-00517-RFB-VCF

**ORDER ADOPTING REPORT &
RECOMMENDATION OF
MAGISTRATE JUDGE CAM
FERENBACH AND GRANTING
MOTION TO DISMISS**

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14 **I. INTRODUCTION**

15 Before the Court for consideration are the Report and Recommendation of the Honorable
16 Cam Ferenbach, United States Magistrate Judge, entered April 30, 2018, (ECF No. 8) and the
17 Defendant United States Postal Service's Motion to Dismiss (ECF No. 12). For the reasons
18 discussed below, the Report and Recommendation is adopted in part as to the individual
19 Defendants. The Court also grants the Motion to Dismiss (ECF No. 12).

20 On March 21, 2018, Plaintiff filed his original Complaint. (ECF No. 1). This Complaint
21 was screened pursuant to 28 U.S.C. § 1915(e) to determine if it alleged a plausible claim. This
22 Complaint was dismissed without prejudice and Plaintiff was granted leave to amend his
23 Complaint. (ECF No. 3). The Order raised various deficiencies with the Complaint, including but
24 not limited to: improper venue, lack of personal jurisdiction, and violation of statute of limitations.

25 On April 13, 2018, Plaintiff filed his Amended Complaint. (ECF No. 5). Plaintiff appears
26 to allege a federal False Claims Act claim against all of the Defendants, a due process claim against
27 some of the Defendants, and state claims against all of the Defendants. Plaintiff essentially argues
28 that the Defendants conspired to falsely accuse him of being involved in an unreported traffic

1 accident while working for the Post Office in Santa Maria, California. This accident allegedly
2 occurred on September 21, 2013 in Santa Maria. Plaintiff alleges that the Defendants reported the
3 accident on official forms of the Postal Service and submitted the claim for payment by the federal
4 government.

5 6 **II. LEGAL STANDARD**

7 The False Claims Act (“FCA”), 31 U.S.C. §§ 3729-33, allows private parties, called
8 “relators,” to bring an action on behalf of the United States to recover for fraud. Id. The FCA
9 authorizes the relator to bring a civil *qui tam* action “for the person and for the United States
10 Government” against those who present false claims to the United States. 31 U.S.C. § 3730(b)(1).
11 “The entire purpose of the FCA’s *qui tam* provisions is to employ the help of individuals to uncover
12 fraud against the government.” United States ex rel. Kelly v. Boeing Co., 9 F.3d 743, 748 (9th Cir.
13 1993). Individuals appearing *pro se* cannot represent the United States in FCA actions. United
14 States ex rel. Stoner v. Santa Clara Cnty. Office of Educ., 502 F.3d 1116, 1126-27 (9th Cir. 2007).

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16 A district court “may accept, reject, or modify, in whole or in part, the findings or
17 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). A party may file specific
18 written objections to the findings and recommendations of a magistrate judge. Id. § 636(b)(1);
19 Local Rule IB 3-2(a). When written objections have been filed, the district court is required to
20 “make a de novo determination of those portions of the report or specified proposed findings or
21 recommendations to which objection is made.” 28 U.S.C. § 636(b)(1).

22 “Constitutional due process requires that defendants ‘have certain minimum contacts’ with
23 a forum state ‘such that the maintenance of the suit does not offend traditional notions of fair play
24 and substantial justice.’” Morrill v. Scott Fin. Corp., 873 F.3d 1136, 1141 (9th Cir. 2017) (quoting
25 Int’l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)). “Personal jurisdiction over each
26 defendant must be analyzed separately.” Harris Rutsky & Co. Ins. Servs. v. Bell & Clements Ltd.,
27 328 F.3d 1122, 1130 (9th Cir. 2003).

1 **III. DISCUSSION**

2 **A. FCA Claim**

3 The USPS has moved to dismiss Plaintiff's FCA claim. The Court grants this Motion as
4 to USPS and all Defendants, since Plaintiff may not bring an FCA claim *pro se*. ex rel. Stoner,
5 502 F.3d 1116, 1126-27.

6 **B. Due Process Claim**

7 The Amended Complaint also asserts a Due Process claim. The statute of limitations for a
8 section 1983 claim in Nevada is two years. Perez v. Seevers, 869 F.2d 425, 426 (9th Cir. 1989).
9 Pursuant to this Court's screening requirement under 28 U.S.C. § 1915(e), this claim is dismissed
10 as to all Defendants as it was commenced more than two years after the alleged 2013 incident
11 which serves as a basis for Plaintiff's claim.

12 **C. State Claims**

13 With the dismissal of the FCA and Due Process claims, the only claims that appear to
14 remain in the Amended Complaint are purported state law claims for fraud, negligence, and
15 intentional infliction of emotional distress. Upon review of these state claims under 28 U.S.C.
16 § 1915(e), the Court finds that they must also be dismissed against all Defendants for being
17 commenced outside of the respective statute of limitations. See N.R.S. §§ 11.190(3)(d) and
18 11.220.

19 The Report recommended dismissal of the state claims against the individual Defendants
20 for lack of personal jurisdiction. The Court, after reviewing Plaintiff's Objection (ECF No. 9),
21 also adopts this portion of the Report. The individual Defendants are not subject to personal
22 jurisdiction in this District based upon the allegations in the Amended Complaint.

23 **D. Dismissal with Prejudice**

24 Finally, the Court finds that allowing Plaintiff to amend his complaint a second time would
25 be futile. The Court therefore dismisses the matter with prejudice. Lopez v. Smith, 203 F.3d 1122,
26 1130 (9th Cir. 2000) (The Ninth Circuit has "repeatedly held that a district court should grant leave
27 to amend even if no request to amend the pleading was made, unless it determines that the pleading
28 could not possibly be cured by the allegation of other facts."); see also Akhtar v. Mesa, 698 F.3d

1 1202, 1212 (9th Cir. 2012) (allowing for dismissal of a pro se complaint without leave to amend
2 if amendment would clearly not cure the deficiencies identified in the complaint).

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4 **IV. CONCLUSION**

5 Accordingly,

6 **IT IS HEREBY ORDERED** that the Motion to Dismiss (ECF No. 12) is GRANTED, the
7 Report and Recommendation (ECF No. 8) is ADOPTED in part and the Amended Complaint is
8 DISMISSED with prejudice. The Clerk of Court is ordered to close this case.

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10 DATED this 22nd day of January, 2019.



11 **RICHARD F. BOULWARE, II**
12 **UNITED STATES DISTRICT JUDGE**
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